C. E. Wilkinson & Sons, Inc. *and* **United Mine Workers of America** *and* **Gregory C. Cook** *and* **Dennis Zadnick.** Cases 25-CA-11222, 25-CA-11222-4, 25-CA-11334, 25-CA-11222-2, and 25-CA-11222-3

May 8, 1981

DECISION AND ORDER

On November 17, 1980, Administrative Law Judge George Norman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order as modified herein.[3]

1. The Administrative Law Judge, as is clear from his recommended Order, found that employee Dennis Zadnick and Gregory C. Cook were discriminatorily discharged in violation of Section 8(a)(3) and (1) of the Act. We agree with his finding for the reasons set forth below.

Respondent operates a mine machine repair facility which is comprised of a machine shop and a track shop. The undisputed record evidence indicates that the Union's organizational campaign began on July 23, 1979,[4] when Yockey, the Union's international organizer, visited Zadnick on Respondent's premises. Zadnick and the organizer agreed that Zadnick would make arrangements for an employee organizing committee and serve as liaison with the Union. Of Respondent's 27 employees 12, including Zadnick, attended the first union organizational meeting on Saturday, August 4. On August 11, 18 of Respondent's 27 employees attended the second union meeting. All 18 employees at that meeting, including Cook and Zadnick, executed authorization cards designating the Union as their exclusive bargaining representative. On Monday, August 13, Yockey personally presented a letter demanding recognition to Respondent's vice president and track shop supervisor, Garret Wilkinson. The recognition demand was refused by Wilkinson.

Zadnick was hired by Respondent on October 1, 1977, as a welder. Cook was hired in April 1978 as a general laborer. The Administrative Law Judge found that on August 12, the day before the recognition demand, Cook, Zadnick, and two other employees received telephone calls from the project engineer and machine shop supervisor, Steward Leithliter, in which Leithliter informed them that they were temporarily laid off. He also told employees to telephone Superintendent John Meyers on Wednesday, August 15, for further instructions. When Zadnick asked Leithliter why the layoff was necessary, Leithliter informed him that there was an electrical breakdown in the machine shop. At the hearing, Leithliter admitted that there never was such a breakdown.

Zadnick visited Meyers on Monday, August 13, to discuss the reasons for his layoff. Meyers told

[1] We hereby note the following inadvertent error of the Administrative Law Judge, which is insufficient to affect the results of our decision: In sec. III of his Decision the Administrative Law Judge states that Max Wilson gave an affidavit to the Board on August 21, 1977, when in fact the record shows, and the Administrative Law Judge later states in sec. III, that Wilson gave the affidavit on August 29, 1977.

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

No exceptions have been filed to the Administrative Law Judge's finding that Respondent did not violate Sec. 8(a)(1) of the Act based on the alleged surveillance of employee Wilson by Superintendent Meyers.

[2] The Administrative Law Judge concluded that Respondent, through Assistant Secretary McIntyre and Project Engineer Leithliter, violated Sec. 8(a)(4) and (1) of the Act, by engaging in surveillance of employee Wilson while he was waiting in the union hall to give an affidavit to a Board agent. We agree with the Administrative Law Judge's finding that such conduct violated Sec. 8(a)(1) of the Act. Therefore, and since our remedy would not be materially affected, we find it unnecessary to pass on the Administrative Law Judge's conclusion that such conduct additionally was violative of Sec. 8(a)(4) of the Act. We shall modify par. 1(b) of the Administrative Law Judge's recommended Order so as to conform it more closely to the violation found.

The Administrative Law Judge concluded that Respondent violated Sec. 8(a)(1) of the Act based on Superintendent Meyers' statement to certain employees, while Zadnick and Cook engaged in picketing on August 15, 1979, that "those two men cannot stop you, and if they think they can, I'll throw both of their asses right out in the street." Although the Administrative Law Judge found Meyers' statement constituted a threat of eviction of Zadnick and Cook, it is clear that the two were not on Respondent's property at the time Meyers made the statement. We find that Meyers' statement constituted a threat of physical violence, rather than of eviction, and we shall modify the recommended Order accordingly.

The Administrative Law Judge, as is clear from his recommended Order, concluded that Respondent violated Sec. 8(a)(1) of the Act by promising or granting economic benefits to the employees in order to discourage their union activities. In agreeing with the Administrative Law Judge's conclusion, we rely on his factual findings concerning the conduct of Gerald Wilkinson, Respondent's president, in his August 20, 1979, meetings with the employees.

[3] Although the Administrative Law Judge found that Respondent violated Sec. 8(a)(1) of the Act by threatening to discharge employees because of their union activities he failed to include in his recommended Order an appropriate remedial provision therefor. Additionally, in par. 1(m) of his recommended Order, the Administrative Law Judge used the narrow cease-and-desist language, "in any like or related manner." We have considered this case in light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), and have concluded that the broad injunctive language, "in any other manner," is appropriate. We shall modify the Administrative Law Judge's recommended Order accordingly.

Member Jenkins would award interest on the backpay awards in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

[4] All dates are in 1979 unless otherwise indicated.

Zadnick that he had no idea what was going on. Immediately after this conversation, Zadnick spoke with Leithliter in Respondent's parking lot. Zadnick asked Leithliter why he had been laid off. It is uncontradicted that Leithliter replied, "You know what its about . . . . Well, some shit has been started around here and Jerry's [Gerald Wilkinson, Respondent's president] going to put a stop to it."

On August 14, Leithliter again telephoned Cook and Zadnick and told them that they had been discharged, but offered no explanation for such action. Leithliter referred both employees to Meyers for further explanation of Respondent's actions. Later that day, Cook and Zadnick each went to the plant and had separate conversations with Meyers to ascertain the reasons for their termination. Meyers told Cook that he had been discharged because he was not learning the machinist job to which he had been assigned in late 1978 quickly enough. Zadnick was informed that he had been discharged because he was under a doctor's restriction from lifting heavy weight as a result of a back injury aggravated in February and that such restriction had prevented him from properly performing his work.

On the morning of August 15, Cook and Zadnick began picketing the plant with signs which read "Unfair Labor Practice" on one side, and "Unfair to Organized Labor" on the other side. That same morning most of the day-shift employees joined the pickets and refused to enter the plant. The strike ended on August 20, the same day the Union filed a representation petition for the production and maintenance employees. Following Respondent's offers of reinstatement, Cook returned to work August 21, and Zadnick returned on August 23.

We find that Respondent violated the Act with respect to Cook and Zadnick as alleged. Respondent's knowledge of the employees' union activity is clear, based on the Union's demand for recognition on August 13 and Yockey's credited testimony that at that time Garret Wilkinson said he had known about the Union for "the last few days" and that he had been questioning employees and "nobody would own up to it, or they're too ashamed to." Further, Respondent's animus has been demonstrated by Leithliter's comment to Zadnick concerning the reason for Zadnick's discharge, as well as Respondent's other conduct found unlawful herein. Also, the timing of Cook's and Zadnick's discharges is significant. Thus, although on August 12 they were informed of a temporary layoff, on the day after the Union's demand for recognition, Respondent abruptly converted the temporary layoffs into discharges.

Additionally, Respondent's asserted reasons for discharging Cook and Zadnick do not withstand scrutiny. Thus, although Respondent claimed that Cook was not progessing rapidly enough in his training as a machinist, he had been working as a machinist since late 1978 and Respondent had not warned him about his progress at anytime prior to his discharge in August 1979. Furthermore, although Respondent asserted that Zadnick was discharged because his light-duty status had prevented him from properly performing his work, he had worked under such restrictions for almost 4 months prior to his discharge and there is no evidence that Respondent during that period even mentioned to him that such restrictions were interfering with his work performance. Finally, despite Cook's and Zadnick's asserted deficiencies, on August 12, 1 day prior to the Union's demand for recognition, Respondent placed them on temporary layoff without any indication that it was in any manner concerned about their work performance.

In view of Respondent's knowledge of the employees' union activity, its demonstrated animus, the timing of the discharges, and the pretextual nature of Respondent's asserted reasons for its action, we find that, as indicated by Leithliter's August 13 comment to Zadnick, Respondent discharged Cook and Zadnick because of their union activity. Accordingly, we conclude that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

Additionally, the Administrative Law Judge, although finding that Respondent made an unlawful threat of unspecified reprisal against its employees, did not set forth the facts on which his finding was based. We find that the above-described comment by Leithliter to Zadnick on August 13 constituted a threat of an unspecified reprisal by Respondent against employees for engaging in union activity. Accordingly, we conclude that Respondent thereby violated Section 8(a)(1) of the Act.

2. The Administrative Law Judge found that employees Bobby Harris and Max Wilson were discharged and laid off, respectively, in violation of Section 8(a)(3) and (1) of the Act. We agree with his finding for the reasons set forth below.

Harris was hired on June 4 and worked in the track shop under Garret Wilkinson until his discharge on August 31. He attended the union meeting of August 11, at which time he executed an authorization card. Harris also attended a union meeting on August 13 and engaged in a strike with the other employees from August 15 until August 20. The record shows that Harris was requested by Garret Wilkinson to withdraw his union authorization card 2 days before he was discharged. It is un-

contradicted that Harris refused Wilkinson's request.

Max Wilson was employed as a laborer in the machine shop beginning November 1977 and later was transferred to the track shop as its truckdriver, pin press operator, and occasional welder. As of August 31, there were four employees in the track shop. Wilson was laid off by Garret Wilkinson on August 31, but was recalled on September 25. Wilson attended the union meetings on August 4 and 11, executed an authorization card on August 11, and attended the union meeting on August 13. He also participated in the strike.

We conclude that Respondent's discharge of Harris and layoff of Wilson were unlawful. As noted above, Respondent's knowledge of its employees' union activities has been established and its union animus is clear. Additionally, Harris was discharged 2 days after refusing Garret Wilkinson's request that he withdraw his union authorization card and Wilson was laid off 2 days after Respondent had engaged in surveillance of him at the union hall.

Furthermore, we find that Respondent's asserted reasons for its actions were pretextual. In this regard, Gerald Wilkinson testified that the two employees were laid off because of a decline in track shop business over the preceding 2 years. Garret Wilkinson testified about a decline in track shop business for the 2-month period before August and added that Harris was discharged because of two customer complaints which he had received concerning the quality of certain work done by Harris. The record, however, reveals a substantial increase in the gross billings of the track shop for 1979 compared to 1978. And, although Respondent also asserted that it experienced a decline in its net profits, it failed to submit any documentary evidence to support that assertion. Furthermore, between August 31, the date of Wilson's layoff, and September 25, the date of his recall, Respondent hired a new employee who was assigned most of the truckdriving responsibilities previously performed by Wilson. Additionally, as found by the Administrative Law Judge, Respondent's practice during previous slack periods of work was to assign miscellaneous tasks to employees, including, *inter alia*, cleanup, repairs, and plant construction, rather than to lay off employees, and Garret Wilkinson conceded that it was Respondent's policy to avoid layoffs. Finally, Respondent did not mention to Harris that it had received any customer complaints concerning his work and there is no evidence that it at any time warned Harris about his job performance.

For all of the above reasons, we conclude that Respondent's discharge of Harris and layoff of Wilson were violative of Section 8(a)(3) and (1) of the Act.

3. Although the Administrative Law Judge's recommended Order requires Respondent to cease and desist from giving employees the impression that their union meetings are under surveillance, he failed to set forth what conduct by Respondent necessitated this remedy. It is undisputed that Garret Wilkinson approached Harris at the track shop on August 15 and asked Harris if he had gone to the August 11 union meeting. Wilkinson did not volunteer the source of his information concerning the union meeting at the time he spoke to Harris, and we note that there was no evidence of any general announcement, written or otherwise, concerning any of the three union meetings held prior to this incident. Accordingly, we find that Wilkinson's statement clearly created the impression that union meetings were under surveillance by Respondent and conclude that Respondent thereby violated Section 8(a)(1) of the Act.

4. We adopt the Administrative Law Judge's conclusion that a bargaining order is warranted in this case. In so doing, we note that in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court approved our use of bargaining orders as remedies in cases marked by substantial employer misconduct which has the "tendency to undermine [the Union's] majority strength and impede the election process."[5] The Court explained that where the union had at one time enjoyed majority support among the employees, the Board, in fashioning a remedy can properly consider:

> . . . the extensiveness of an employer's unfair labor practices in terms of their past effect *on* election conditions and the likelihood of their recurrence in the future. If the Board finds the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue . . . .[6]

It is undisputed that at all times material herein a clear majority of unit employees had signed authorization cards designating the Union as their collective-bargaining representative. Respondent, as noted above, engaged in numerous unfair labor practices, including, *inter alia*, discriminatorily discharging three employees and laying off a fourth in

[5] 395 U.S. at 614.
[6] *Id.* at 614-615.

a unit of 27 employees; suggesting that employees form their own labor organization and rendering unlawful assistance to and unlawfully recognizing and bargaining with employee labor organizations; promising and granting benefits for the purpose of discouraging union activity; threatening to close the plant in retaliation for further union activity; and engaging in various other threats, interrogations, and surveillance. We find that this campaign of serious and extensive unfair labor practices had the tendency to undermine the Union's strength and impede the election process.[7]

We also find that the likelihood of Respondent's misconduct recurring during an election campaign is clearly present since, following the filing of the Union's representation petition, Respondent continued on its course of unlawful conduct by laying off Wilson, discharging Harris, and soliciting the employees' withdrawal of their union authorization cards, thus demonstrating, in our view, a continuing hostility toward the Union.

We further find that the possibility of erasing the effects of Respondent's unfair labor practices and of ensuring a fair election by the use of traditional remedies is slight. Respondent's threat of plant closure, its promise and grant of benefits, and the requested withdrawal of union authorization cards, all involve long-term coercive effects upon the employees' free choice.[8] Furthermore, Respondent's unlawful discharge and/or layoff of four employees, including the leading union activist, was conduct that the Board and the courts have long classified as misconduct going "to the very heart of the Act."[9]

Therefore, for all the above reasons, we conclude that the employees' sentiment, once expressed through authorization cards, would, on balance, be better protected by our issuance of a bargaining order than by traditional remedies.[10]

CONCLUSIONS OF LAW

1. Respondent C. E. Wilkinson & Sons, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent employed at its Boonville, Indiana, facility, including truck drivers, supply men and janitors, exclusive of all office clerical employees, all salesmen, all professional employees, all guards and all supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By engaging in surveillance of employees' union activities, meetings, and concerted protected activities; by promising and granting its employees economic benefits for the purpose of discouraging union activities; by threatening its employees with plant closure; by threatening its employees with physical violence or discharge; by creating the impression that it was keeping union meetings under surveillance; by interrogating employees concerning their own or other employees' union membership, activities, and desires; by threatening employees with unspecified reprisals if they did not refrain from further union activity; by warning or directing its employees to remove union buttons; and by soliciting its employees to withdraw their union authorization cards, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By suggesting or giving aid to employees that they form committees to deal with Respondent concerning wages, hours, and other terms and conditions of employment, and by recognizing and bargaining with employee committees as the exclusive bargaining representatives of its employees, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

6. By laying off Max Wilson in order to discourage his union activities, and by discharging employees Gregory C. Cook, Dennis Zadnick, and Bobby Harris because of their union activities, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

7. Since August 11, 1979, the Union has represented a majority of the employees in the above-described appropriate bargaining unit, and since August 13, 1979, the Union has been the exclusive bargaining representative of said employees within the meaning of Section 9(a) of the Act.

8. By refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above-described appropriate unit, Respondent, as of August 13, 1979, engaged in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

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[7] See *Faith Garment Company, Division of Dunhall Pharmaceutical, Inc.*, 246 NLRB 299 (1980).

[8] See *Teledyne Dental Products Corp.*, 210 NLRB 435 (1974); *Heat Research Corporation*, 243 NLRB 206 (1979).

[9] See, e.g., *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941). The fact that Cook and Zadnick were subsequently reinstated does not remove the coercive impact of Respondent's action. See *Faith Garment, supra.*

[10] Respondent embarked on its course of unlawful conduct on August 13, 1979, the day of the unlawful threat of unspecified reprisal by Leithliter to Zadnick and the Union demanded recognition on that same date. Accordingly, we find that Respondent's bargaining obligation arose as of August 13, 1979. *Cas Walker's Cash Stores, Inc.*, 249 NLRB 316 (1980); *Drug Package Company, Inc.*, 228 NLRB 108 (1977); *Trading Port, Inc.*, 219 NLRB 298 (1975).

9. The above-described unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, C. E. Wilkinson & Sons, Inc., Boonville, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) Engaging in surveillance of employees' union activities or meetings or other protected activities."

2. Insert the following as new paragraph 1(d) and reletter the subsequent paragraphs accordingly:

"(d) Threatening employees with discharge or physical violence because they engage in union or protected concerted activities."

3. Substitute the following for new paragraph 1(n):

"(n) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge or lay off employees because they engage in union activities or because they engage in protected concerted activities.

WE WILL NOT engage in surveillance of our employees' union activities or of their union meetings, or protected concerted activities.

WE WILL NOT promise or grant our employees economic benefits for the purpose of discouraging their union membership or their selection of a collective-bargaining agent.

WE WILL NOT threaten our employees with discharge or physical violence because they engage in union or protected concerted activities.

WE WILL NOT threaten our employees with plant closure if we are required to recognize and bargain with the Union.

WE WILL NOT give our employees the impression by making statements concerning a meeting held by employees that we are keeping under surveillance the meeting places, meetings, and activities of the Union, or other concerted protected activities our employees engage in for the purpose of collective bargaining for their mutual aid or protection.

WE WILL NOT make suggestions or give aid to employees that they form committees or organizations to deal with us concerning wages, hours, and other terms and conditions of employment.

WE WILL NOT recognize or bargain with employee committees as the exclusive bargaining representatives of our employees.

WE WILL NOT interrogate our employees concerning their own or other employees' union membership, activities, and desires.

WE WILL NOT threaten our employees with unspecified reprisals if they do not refrain from becoming or remaining members of the Union or giving any assistance or support to it.

WE WILL NOT warn or direct our employees to remove union buttons.

WE WILL NOT solicit our employees to withdraw their union authorization cards.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America, as the exclusive bargaining representative of our employees for the following appropriate bargaining unit:

All production and maintenance employees of the Employer employed at its Boonville, Indiana, facility, including truck drivers, supply men and janitors, exclusive of all office clerical employees, all salesmen, all professional employees, all guards and all supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Bob Harris immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previ-

ously enjoyed, and WE WILL make him whole for any loss of pay due to the discrimination againt him, plus interest.

WE WILL make Gregory C. Cook, Dennis Zadnick, and Max Wilson whole for any loss of pay they may have suffered due to the discrimination against them, plus interest.

WE WILL, upon request, recognize and bargain collectively in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America, as the exclusive bargaining representative of the employees in the appropriate bargaining unit described above and, if an understanding is reached, embody such understanding in a signed agreement.

C. E. WILKINSON & SONS, INC.

DECISION

STATEMENT OF THE CASE

GEORGE NORMAN, Administrative Law Judge: These consolidated cases were heard in Boonville, Indiana, on March 17 through March 20, 1980. Charges were filed on August 14, 15, and 16 and September 13, 1979,[1] and the order consolidating cases, complaint, and notice of hearing was issued on September 14. The complaint alleges that C. E. Wilkinson & Sons, Inc., herein called Respondent, committed certain unfair labor practices in violation of Section 8(a)(1), (2), (3), (4), and (5) of the National Labor Relations Act, as amended, herein the Act. It also alleges that Respondent's conduct precludes the holding of a fair election among its employees; Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining resentative of its employees and has engaged in such conduct for the purpose of destroying the Union's majority status and avoiding and evading its obligation to bargain with the Union. The General Counsel seeks as a remedy for the unfair labor practices a requirement that Respondent recognize and bargain with the Union as the exclusive representative of the employees in the unit because said alleged unfair labor practices have made a fair election of representatives impossible.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Post-hearing briefs have been received from the General Counsel and Respondent.

Upon the entire record and based upon my observation of the witnesses and consideration of the briefs, I make the following:

[1] All dates are in 1979 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

Respondent is an Indiana corporation with its principal office and place of business at Boonville, Indiana. It is engaged in the business of repairing mine equipment and performing related services. During the past year Respondent has performed services valued in excess of $50,000 for enterprises located in States other than the State of Indiana. Respondent has also performed services valued in excess of $50,000 for enterprises within the State of Indiana including certain coal mining companies which in turn shipped goods and materials valued in excess of $50,000 directly to parts located outside the State of Indiana. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that United Mine Workers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Facts

Respondent is an industrial machine shop located in Boonville, Indiana. Its primary business is repairing and milling complex industrial machine parts and reconditioning the running tracks of earthmoving machinery, primarily for the mining industry. The business is divided into two major sections. In one section, large boring and cutting machinery is used to fabricate replacement parts for industry. This section is known as the large bay machine shop and it is here where Respondent's larger employee compliment is, as well as where most of the precision work is done. The second main division of Respondent is the track shop. This division is in a building separate from the machine shop and it is here where Respondent reconditions hauler treads for heavy mining equipment. Respondent's machine shop operation is directly supervised by John Meyers with stewart "Bud" Leithliter, its project engineer. Garret Wilkinson supervises the work of the track shop and his brother Gerald Wilkinson is the president and chief executive officer of the combined operation.

The Union Organizational Campaign

The Union International Organizer Henry Yockey visited Respondent's premises on July 23 after having learned that Respondent's employees were interested in organizing. While there, Yockey conferred with welder Dennis Zadnick in the employee parking lot prior to the commencement of the first shift.[2] Zadnick and Yockey agreed that Zadnick would make arrangements for an employee organizing committee and serve as liaison with the Union.

[2] The first shift for the machine shop employees was from 7:30 a.m. to 4 p.m. the second from 4 p.m. to midnight. The track shop worked only one shift from 7:30 a.m. to 4 p.m.

On Saturday August 4, the first organizational meeting took place in a shelter house in Lynville Park, Lynville, Indiana, just north of Boonville. Many employees, including Zadnick, attended that meeting which was conducted by Yockey and Union Safety Coordinator Robert Barnett. A week later, August 11, the second meeting was held with 18 employees attending. At that meeting all 18 employees executed authorization cards designating the Union as their exclusive bargaining representative. On Monday, August 13, Yockey and Barnett personally presented a letter demanding recognition to Garret Wilkinson. Wilkinson refused to recognize the Union as the exclusive bargaining representative of Respondent's employees.

On Sunday August 12 the night before the demand for recognition was made, machine shop employees Dennis Zadnick, Gregory Cook, Rick Deffendoll, and Tom Koss received telephone calls from project engineer Leithliter. Leithliter told them that because of an electrical failure in the machine shop, they were not to report to work the next morning but were to telephone Superintendent Meyers the following Wednesday for further instructions. However, on Tuesday, August 14, Zadnick and Cook received another telephone call from Leithliter who told them that they had been discharged. Leithliter also called Deffendoll but told him to return to work. As for employee Koss the record does not disclose what happened to him but apparently he was also discharged.

The Strike

Later that day Zadnick and Cook went to the plant and each had a separate conversation with Meyers to find out why he was discharged.[3] Both were of the opinion that they were discharged because of their organizational activities, so on the morning of August 15 they began picketing the plant. They walked on public walks adjoining two sides of Respondent's property and each carried a sign which read "Unfair Labor Practice" on one side and "Unfair To Organized Labor" on the other. That morning most of the day-shift employees joined the pickets and refused to go into the plant.

On August 21, the employees returned to work including Greg Cook. Zadnick returned to work on August 23.[4]

During the strike, two separate committees composed of strikers met with representatives of management in an effort to negotiate an end to the strike. Gerald Wilkinson was out of town during the week the strike began. After his return, on Saturday, August 18, he and Meyers visited five strikers in their homes, ostensibly for the purpose of determining whether each intended to return to work the next Monday. Wilkinson telephoned other strikers including employee Bill Roth. He testified that his visit to the home of employee David Herron was for a different purpose. He said that "normally the men talked to Dave real easily." Wilkinson said he asked Herron "what was going on . . . about the strike." Herron also was on vacation the previous week and had visited the strikers only briefly the day before and hence did not know much about the strike and the reasons therefor. Wilkinson suggested to Herron that "he ought to get the men together in a group and talk to them." Herron agreed. The next day Herron telephoned each striker and invited him, including spouses, to attend a dinner at "his" expense[5] that evening at a restaurant in nearby Evansville, Indiana, and telephoned Gerald Wilkinson to inform him of the dinner arrangements. About 18 employees attended the dinner and, following the meal, Herron addressed the group. According to Zadnick and Deffendoll, Herron did most of the talking. He told the employees that, as far as he was concerned, the United Mine Workers is not the Union to get into the plant. He said that he had talked to "Jerry" (Wilkinson) previously that day and that he would go along with a company union, or a union organized by ourselves. Herron told them that, as for the United Mine Workers, Wilkinson would not accept it.

At the meeting, Herron relayed an offer of reinstatement of Cook and Zadnick that Gerald Wilkinson had made to him; namely, that Zadnick could return to work if he secured a doctor's release from weight lifting restrictions[6] and that Cook could return if he agreed to attend machinist classes.[7] Herron tried to get the employees to vote on whether to accept "Jerry's" offer and return to work, but the consensus was to "sleep on it and" meet with Wilkinson the next morning.

On the following morning (Monday) Gerald Wilkinson met with the strikers inside the plant. At that meeting, Herron asked Gerald Wilkinson if he would reinstate the pickets on the conditions stated above and Wilkinson agreed to do so. Employee Bill Roth, who had received a telephone call from Wilkinson over the weekend, asked Wilkinson how many of the improvements he mentioned during their conversation he actually intended to implement. Wilkinson testified as follows:

> I told them several things that I had in mind that I would like to do for them. I'd like to, when we build new offices, build a lunchroom in there for them. And since the gas situation was getting much worse all the time, try to put in fuel pumps to help on the gas situation, at cost, you know.

The idea of having a pension plan was also raised. Wilkinson said he did not want to institute a formal plan but that he would consider at some indefinite time in the future, giving the employees a form of bonus which they

[3] Leithliter was also present during that conversation. Zadnick followed Leithliter out to the parking lot. Zadnick asked him why he had been laid off. Leithliter replied: "You know what its about . . . well, some shit has been started around here and Jerry's going to put a stop to it."

[4] On Monday August 20 the Union filed a representation petition with the National Labor Relations Board. Proceedings on that petition were stayed as a result of the filing of the instant charges.

[5] Herron was reimbursed approximately $150 by Respondent for the cost of the employee dinner.

[6] Zadnick had been working under a weight lifting restriction imposed upon him by his doctor because of a back injury he received in an automobile accident.

[7] Cook was an apprentice machinist and apparently Wilkinson was referring to what he considered to be Cook's slow rate of progress toward becoming a journeyman machinist.

could invest in a IRA account if they chose.[8] Also, during the meeting an employee asked Wilkinson to recognize the United Mine Workers. He said that he could not do so for fear that strikes would "close him down." Herron then suggested that the employees form their own union and Wilkinson stated he would deal with such a union. The meeting ended with a suggestion that the employees vote on returning to work, to which Wilkinson responded that he had hoped they "would have had all this settled at the dinner last night."

The striking employees then gathered in the parking lot but could not agree on whether to return to work. They elected a committee of four consisting of Rick Deffendoll, Bill Roth, Max Wilson, and Dale Harpenau to pursue further negotiations with Wilkinson. A list of improvements in working conditions was compiled by Deffendoll from suggestions made by the strikers and the employee committee returned to meet with Wilkinson to discuss the list of demands.

Deffendoll read out 10 demands to Wilkinson. Wilkinson agreed to negotiate wage increases with the committee each June and December, the months in which Respondent had in the past given wage increases. He agreed to provide the employees with some form of retirement plan by December 1980, to pay overtime for in excess of 32 hours whenever a holiday fell during the workweek, and agreed that no employee would be disciplined without a member or members of the committee being present. The committee also requested that a safety committee of employees meet with Wilkinson weekly, but Wilkinson would only agree to meet "perhaps" monthly.

After the discussion of the demands a committee member said that the strikers wanted Wilkinson to sign the demands, to agree to them in writing. Whereupon, Wilkinson left the room momentarily and upon returning stated that he had consulted his attorney who told him, in effect, that it would not be legal for him to sign such an agreement because it would be admitting that the committee was a union, that there could not be one, because the United Mine Workers already represented Respondent's employees and that there could not be a company union in there at the same time. Wilkinson then suggested that their agreement remain verbal and that henceforth the committee be referred to as a "safety committee."

Also during that meeting Wilkinson said that if Respondent were to recognize the United Mine Workers and the employees became members, other members of the United Mine Workers who were then on layoff from a nearby machine shop could displace the Wilkinson employees through seniority. In that connection, General Counsel's witnesses Roth and Deffendoll testified that during the meeting they talked about the Jasonville Shop and that it was Wilkinson's view that if the United Mine Workers were to represent Respondent's employees the United Mine Workers employees at that shop had more seniority then Respondent's machinists and that they would be coming down to Wilkinson trying to push the Wilkinson employees out their jobs.

After relaying the substance of their conversation with Gerald Wilkinson to their fellow strikers all agreed to return to work. At approximately 2:30 p.m. that same day the committee met again with Gerald Wilkinson to inform him of their decision to return to work. According to the General Counsel's witnesses the atmosphere at that meeting was relaxed. They discussed some of the demands agreed to that morning and the future composition of the "safety committee." In addition, Wilkinson asked Deffendoll "who all had signed authorization cards." Deffendoll replied that the vast majority had. Again, Wilkinson left the room for a short time. Upon his return he told them that he had talking to his lawyer and his lawyer told him that the only way the Company was going to have any leverage was to get the union cards back. He then inquired as to who had asked to get back their union cards. Dale Harpenau said he had asked to get back his card.

The Discharge of Bobby Harris and the Layoff of Max Wilson

Bobby Harris was hired on June 4 and worked in the track shop until his discharge on August 31. He was the track or pin press operator who occasionally did some welding. Harris attended the meeting of August 11, at which he executed an authorization card, and the meeting of August 13. He was an employee who remained out on strike with the other employees. Two days before his discharge Harris refused to withdraw his United Mine Workers authorization card although he was requested to do so by Garret Wilkinson.

Max Wilson was employed as a laborer in the machine shop beginning November 1977, and later transferred to the track shop as its truckdriver, pin press operator, and occasional welder. Wilson was laid off on August 31, but recalled on September 25. Other employees working in the track shop at the time were Stanley Underhill and Scott Richardson whose work was primarily welding. Wilson attended both union meetings at Lynville Park, signed an authorization card on August 11, attended a third meeting at Boonville City Park on August 13, participated in the strike throughout its duration, served on the employee committee which met with Wilkinson on August 20, and gave an affidavit to the Board on August 21 during the investigation of the charges filed by Cook and Zadnick.

Gerald Wilkinson testified that he conferred with Garret Wilkinson, his brother, about the discharge of Harris and layoff of Wilson prior to each event. Both testified that the two employees were laid off because of a decline in track shop orders. Garret Wilkinson testified further that Harris had been discharged because of a reduction in work and two customer complaints Garret Wilkinson received about the quality of his work. Gerald Wilkinson testified, in effect, that the track shop showed a decline for the two preceding years. Garret Wilkinson testified that the decline started in July and later stated that the business in July was about same as it had been in June but that it had dropped off in August.

[8] In addition to the above, other benefits of employment were discussed including wages and profit sharing, but Wilkinson did not agree to them.

The track shop invoices for calendar years 1978 and 1979 reflect customer billings during each of those years and provide information concerning the amount of work available to track shop employees. The total billings demonstrate that track shop income in 1979 exceeded substantially that of 1978:

TOTAL BILLINGS

1978: $ 171,895 1979: $ 267,197

The customer orders shown in dollar amounts for each month of 1979, including the month of the discharge and layoff follows:

January	$ 6,512
February	15,524
March	5,516
April	20,046
May	20,760
June	45,101
July	34,781
August	28,214
Total	$ 176,454

As may be seen from the above the sales in the months prior to June were substantially below those of June. Harris was hired in the early part of June prior to the jump in sales and was the fourth employee in terms of seniority in the track shop. In addition, the volume of business in the first 8 months of 1979 exceeded total sales for 1978.

Although Garret Wilkinson testified that it was Respondent's policy to avoid layoffs, and that no prior layoffs had occurred since early 1978, half of the track shop employees were laid off in August. Employee Stanley Underhill testified that in his 7 years of employment with Respondent he could not recall any layoffs occurring. Harris, Wilson, and Underhill testified that during slow periods Respondent assigned cleanup and other miscellaneous work to its employees rather than laying them off. Garret Wilkinson acknowledged in his testimony that he had told Harris he could ask for his union card back if he wanted to. From that one may reasonably infer that prior to August 28 Garret Wilkinson had no intention of discharging Harris. Harris and Wilson were let go because of their union activity.

The 8(a)(4) Allegation

On the evening of August 29 Wilson was interviewed by a Board agent at the Union's Boonville office. While waiting his turn to be interviewed, Wilson observed through a glass storm door and later from a walkway outside the office, Lynn McIntyre, assistant secretary of Respondent, first driving west on Main Street, then a few minutes later, driving past the front of the office, in a southerly direction on Second Street. He also observed John Meyers driving south on Second Street and a few moments later he observed Stewart Leithliter who first drove north on Second Street past the Union's front door, then returned south on the same street.

McIntyre acknowledged seeing Wilson and exchanging waves but contended that her object was a visit to the local supermarket, not surveillance. The General Counsel does not dispute that McIntyre may have been headed for the store but contends that her curiosity was aroused by Wilson's presence, and she took a turn around the block for a second look to ascertain what the purpose of his presence at the union office might be.

There is no evidence that Meyers saw Wilson nor is there any direct evidence that Leithliter saw Wilson. However Wilson's observations of Leithliter stand unrebutted on the record. The General Counsel contends that, while surveillance may not have been the initial motivating force of their visits to the union hall locale, the second trips of McIntyre and Leithliter evidence no purpose but that of surveillance. The General Counsel contends also that, as in the case of Harris, the timing of this event with the layoffs suggest a precipitant relationship.

Respondent, on the other hand, adduced the testimony of Lynn McIntyre, who testified that on the day in question she left work shortly after 5 and returned to her home. She said she picked up soft drink bottles to take them to the grocery where she regularly shops. Her destination was the X-Market which is on the outskirts of the west side of Boonville. From McIntyre's home the only available route to the X-Market is west on Main Street, Boonville's one-way street leading west out of town. McIntyre testified that to get to X-Market on Main Street it is necessary to intersect Second Street, where the union headquarters is located. She said that when she arrived at the intersection of Second and Main she stopped for the traffic light. While waiting for the light to change McIntyre testified that a red hat caught her eye and that she said the man wearing it waved and she waved back. She said when the light changed she headed west toward her destination. She testified further that she did not drive around the block after stopping at the red light but proceeded to the market. McIntyre further testified she did not think it unusual to see Max Wilson in downtown Boonville and that she did not report seeing him to any company official.

Although McIntyre states she did not drive around the block as testified by Max Wilson, Max Wilson's testimony that she was going south on Second Street the second time he saw her leads to the conclusion that she did drive around the block and was not on her way home from the X-Market when Wilson saw her and waved to her the second time. This conclusion is based on the fact that Main is one way west and Locust is one way east. Both converge into Route 460 where the X-Market is located. McIntyre's testimony that she lived on Fifth Street between the City Lake 1 and Main Street reveals that she lived on Fifth Street south of Main Street and that a return route from the X-Market to her home could only be by way of Locust Street which is a one-way street parallel to Main Street but running east. She would have been going east on Route 460 to the point where Route 460 separates into Main and Locust Streets then east on Locust Street to Fifth Street and then south on Fifth Street to her home. She would not have been traveling south on Second Street but would have crossed Second Street going east on Locust which is one block south and parallel to Main Street where the union hall

was located. Therefore, I do not credit McIntyre. I believe, as Wilson testified, that after she saw him standing in front of the union hall she then turned right on First Street, then west on Sycamore Street, and then south on Second Street to Main, at which time Wilson saw her and they waved a second time. The Respondent contends that what the General Counsel is claiming here as surveillance is merely a managerial employee of the employer running daily errands and, while on these errands, she routinely travels down a street which runs by the Union's office. Because of the union office location, in the center of town, and because McIntyre regularly takes this route, no surveillance or the impression of surveillance should be found. I would agree with Respondent if it were not for the fact that shortly after Wilson saw McIntyre, he saw her again going south on Second Street. That convinces me that she went around the block, her purpose was to take another look at Wilson who was at the union hall for the purpose of giving testimony to a Board agent. I find that to be surveillance. In addition, I find that Leithliter was also engaged in surveillance.

Wilson also testified that 15 minutes after seeing McIntyre he saw John Meyers heading south on Second Street. John Meyers testified that his home was in Chandler, Indiana, just west of Boonville. His normal route from work to home would be as follows: He would leave Wilkinson plant on Second Street, head south on Second Street to Main Street. Meyers said that he had no knowledge of the union offices being located on the corner of Main and Second Streets. He also testified that no company official instructed him to take that route and that it was his normal course of travel home. Respondent cites *Cornwell Company, Inc.*, 161 NLRB 807 (1966), to support his contention that where an employer in the course of his regular routine comes across an employee organizational activity no surveillance can be found. Although the Board did not pass on the surveillance issue in that case the trial examiner's finding in that matter was left undisturbed by the Board.

I agree with Respondent that the General Counsel has not sustained the burden of proof that John Meyers was engaged in surveillance at the time that Max Wilson observed him pass the union hall.

Surveillance by Photographs

Garret Wilkinson admitted taking several photographs of striking employees on Wednesday, August 15. One photograph shows employee Dennis Zadnick and an unknown individual manning the picket line. Another photograph shows union representative Henry Yockey sitting in his car. Wilkinson testified that he took these photographs standing in front of his building sometime between 8 and 9 a.m.to see if the picket was being manned by any nonemployees. Stewart Leithliter acknowledged taking approximately eight photographs of the pickets and the strikers stationed in the parking lot on August 16 and 17. Respondent also acknowledged that at all times the pickets and strikers were peaceful.

Respondent requests that I take "administrative notice" of the fact that the United Mine Workers has a reputation of violent activity. And that when Garret Wilkinson saw an unknown individual on the picket line he was entitled to photograph that individual in anticipation of any legal action that might need to be taken such as an injunction. Respondent cites the fact that Union Representative Yockey admitted that during the time of the picketing members of his union were milling around the vicinity. Respondent claims that because of that it had every reason to suspect violent activity would take place and as such it armed themselves with photographs, "all but essential to get an injunction."

On the other hand, the General Counsel argues that an employer engages in unlawful surveillance when it photographs employees peacefully engaged in protected activity and acknowledges that, where the activity involves mass picketing, violence, or other unlawful conduct and the photos are taken for the purpose of securing evidence for an injunction, photographs are permissible. *Radio Industries, Inc.*, 101 NLRB 912 (1952), *Glomac Plastics, Inc.*, 234 NLRB 1309 (1978), *Electri-Flex Company*, 238 NLRB 713 (1978).

In the circumstances related above I do not believe that the situation warranted the taking of photographs of the pickets. There was no mass picketing or violence nor indeed any threats of such and I know of no authority or precedent to support the proposition that mere reputation for violence by a union justifies the taking of photographs of peaceful picketing. I find therefore that the taking of photographs on August 15, 16, and 17 by Garret Wilkinson and Stewart Leithliter of the employees while picketing is surveillance in violation of Section 8(a)(1) of the Act.

Threats

On the evening of August 15, Zadnick overheard a conversation between Meyers and second-shift employees Charles Stout and Jack Wilbur while he, Cook, and Yockey were standing on the sidewalk adjacent to the parking lot where Stout and Wilbur were situated. Leithliter and Meyers emerged from the plant and engaged the pickets in a conversation in which Zadnick heard Meyers tell them that there was no way that Jerry (Wilkinson) was going to accept the Union, that he couldn't afford it, and that all the men that were sitting out in this parking lot honoring the strike could be fired and thrown out of the parking lot. Then, referring to Zadnick and Cook, he said, "those two men cannot stop you, and if they think they can, I'll throw both of their asses right out in the street."

Meyers acknowledged talking with the strikers but denied threatening to throw anyone into the street. Zadnick's testimony for the most part was credible. He did not hesitate, his memory of the events was good and he was consistent. Meyers, on the other hand, did not strike me as a candid and straightforward witness. I therefore find that Meyers did threaten closure, discharge, and eviction of Zadnick and Cook in violation of Section 8(a)(1) of the Act.

On August 21, Zadnick went to the plant to question Meyers about the newspaper accounts concerning his (Zadnick) and Cook's discharges. He testified that he was concerned about the inaccuracy of the stories inas-

much as they could affect his ability to secure future employment. The discussion turned from a discussion of the articles to a discussion of the union organizational campaign. According to Zadnick, Meyers told him that Yockey was no good and that Zadnick was getting in nothing but trouble; that the Union would break Jerry and that, if the Union got in, Jerry would either just sell out all, or sell the machine shop and take the machines with him elsewhere.

Meyers testified that on the morning of August 23 upon Zadnick's return to work[9] Zadnick wore a badge reading "Organized." Meyers ordered Zadnick "to take the damn thing off." Inasmuch as Respondent failed to prove that safety considerations or other special circumstances were posed by the wearing of union buttons I find that Meyers' order to Zadnick to remove it to be in violation of Section 8(a)(1) of the Act. *United Parcel Service, Inc.*, 234 NLRB 223 (1978); *St. Joseph's Hospital*, 225 NLRB 348 (1976).

Interrogations

Union Representative Yockey testified that, during his meeting with Garret Wilkinson on August 13, Wilkinson stated that he had known about the Union for the last few days and that he had been questioning employees and nobody "would own up to it, or they're too ashamed to."

Employee Stan Underhill testified that on the same morning Garret Wilkinson and Carl Garret had questioned him about the existence of the campaign, he said that Carl had walked up to him at his work station and asked him if he knew anything about a union being started in the other building, to which Underhill replied, "No." Garret Wilkinson then came into the conversation and after Carl Garret told him what conversation he had with Underhill, Wilkinson asked Underhill, "Well, do you know anything?" Underhill again denied knowing anything about the Union. Garret Wilkinson testified that he had a conversation with employee Stan Underhill in the track shop wherein Underhill told him that the men in the machine shop were out on strike. Wilkinson then asked Underhill, "What was going on, you know, that some of the people weren't working?" And Underhill said that he would go and see. Wilkinson testified that he never mentioned anything about any union to employee Underhill.

I credit Yockey, Barnett, and Underhill and I do not credit Garret Wilkinson concerning that conversation. Respondent argues that the interrogation was not coercive and therefore not illegal. I disagree. Recently the Board overruled *Stumph Motor Company, Inc.*, 208 NLRB 431 (1974), and *B. F. Goodrich Footwear Company*, 201 NLRB 353 (1973), to the extent that those cases hold that an employer may lawfully initiate questioning about employees' union sentiments where the employees are open and known union supporters and inquiries are unaccompanied by threats or promises. The Board found in the *PPG Industries, Inc., Lexington Plant, Fiberglass Division*, 251 NLRB 1146 (1980), that respondent in that case violated Section 8(a)(1) of the Act by questioning union inherents about their union sympathies and reasons for supporting the union. I find *PPG Industries, Inc.*, controlling and the questioning of Underhill by Respondent a violation of Section 8(a)(1) of the Act.

I also find that Jerry Wilkinson violated Section 8(a)(1) by his interrogations in the meeting of August 20. Wilkinson asked Deffendoll who had signed authorization cards to which Deffendoll replied that the vast majority had. Respondent contends that Wilkinson's discussion with the employees was general and personal and as such was not a violation of the Act. I do not agree. Wilkinson not only interrogated the employees with respect to who had signed union authorization cards but also urged them to withdraw their authorization.

Further Discussions and Conclusions

I find that the following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Respondent employed at its facility, including truck drivers, supply men and janitors, exclusive of all office clerical employees, all salesmen, all professional employees, all guards and all supervisors as defined in the Act.

I also find that on or about August 11 the majority of the employees of Respondent in the unit described above designated and selected the Union as their representative for the purpose of collective bargaining. I also find that a majority of the employees of Respondent in the unit described above would have maintained that majority except for the unfair labor practices of Respondent previously discussed.

Since August 13 Respondent has failed and refused and continues to fail and refuse to recognize or bargain with the Union as the exclusive collective-bargaining representative of its employees in the unit described above, and by such conduct Respondent is in violation of Section 8(a)(5) and (1) of the Act. I am convinced that Respondent engaged in its illegal conduct for the purpose of destroying the Union's majority status and avoiding and evading its obligation to bargain with the Union. Accordingly, I find that an appropriate remedy for Respondent's unfair labor practices should include a requirement that Respondent recognize and bargain with the Union as the exclusive representative of the employees in the unit described above inasmuch as by such acts and conduct Respondent has made a fair election of representatives impossible.

I further find that Respondent through its agent Herron and president, Gerald Wilkinson, rendered unlawful assistance in support of a labor organization or organizations (referring to the two employee committees discussed above) and thereby did engage in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

[9] Zadnick was not able to secure a doctor's appointment to obtain a release from the lifting restrictions until August 22. He returned to work on August 23.

By engaging in the surveillance of employee Max Wilson while he was at the union office for the purpose of giving an affidavit to the National Labor Relations Board agent, Respondent through its agents Lynn McIntyre and Bud Leithliter committed unfair labor practices within the meaning of Section 8(a)(4) and (1) of the Act.

In *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court upheld the power of the Board to issue bargaining orders where union majority strength is shown to have existed and the unfair labor practices have tended to "undermine majority strength and impede the election process" to the extent that the Board believes additional remedies may not erase the coercive effects of past practices. On August 13 the Union enjoyed majority status by virtue of authorization cards signed by all 18 of Respondent's employees. Having found that Respondent committed a series of unfair labor practices including surveillance of union activities and meetings, discharge, and layoff of prounion employees, reprisals against prounion employees, the making of threats, and the promise of benefits it is uncertain that traditional remedies would remove the effects of the conduct and accordingly I believe that a bargaining order is an appropriate remedy. *Faith Garment Company, Division of Dunhall Pharmaceutical, Inc.*, 246 NLRB 299 (1979), 630 F.2d 630 (8th Cir. 1980).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices in violation of Section 8(a)(1), (2), (3), (4), and (5) of the Act I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has unlawfully refused to bargain collectively with the Union, I shall recommend that it be ordered to bargain collectively with the Union, upon request, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment for the employees in an appropriate unit described below. I shall also recommend that any understanding that the parties may reach shall be embodied in a signed agreement.

I shall further recommend that Respondent cease its assistance and interference with the employee committees, and offer Bob Harris immediate and full reinstatement to his former position or, in the event that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges. I also recommend that Respondent make employees Gregory C. Cook, Dennis Zadnick, and Max Wilson whole for any loss of pay they may have suffered by reason of Respondent's unlawful discrimination against them by payment to each of them a sum of money equal to that which each would have earned from the date of the discharge to the date of reinstatement, less net earnings during such periods.

Backpay and interest thereon is to be computed in accordance with the formula described in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[10]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By engaging in the conduct described in section III, above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), (3), (4), and (5) of the Act.

Upon the foregoing findings of fact and the entire record and pursuant to Section 10(c) of the Act I hereby issue the following recommended:

ORDER[11]

The Respondent, C. E. Wilkinson & Sons, Inc., Boonville, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or laying off employees, or otherwise discriminating against them, because they engage in union activity or because they engage in concerted activity for their mutual aid or protection.

(b) Engaging in surveillance of employees' union activities or meetings.

(c) Promising or granting its employees economic benefits for the purpose of discouraging union activities or the selection of a bargaining agent.

(d) Threatening its employees with plant closure if Respondent was required to recognize and bargain with the Union.

(e) Giving its employees the impression by making statements concerning a meeting held by employees that it was keeping under surveillance the meeting places, meetings, and activities of the Union, or other concerted activity of its employees engaged in for the purpose of collective bargaining for their mutual aid or protection.

(f) Making suggestions or giving aid to employees that they form committees or organizations to deal with Respondent concerning wages, hours, and other terms and conditions of employment.

(g) Recognizing or bargaining with employee committees as the exclusive bargaining representative of its employees.

[10] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(h) Interrogating its employees concerning their own or other employees' union membership activities and desires.

(i) Threatening its employees with unspecified reprisal if they did not refrain from becoming or remaining members of the Union or giving any assistance or support to it.

(j) Warning or directing its employees to remove union buttons.

(k) Soliciting its employees to withdraw their union authorization cards.

(l) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America as the exclusive bargaining representative of its employees in the following appropriate bargaining unit:

> All production and maintenance employees of the Respondent employed at its facility, including truck drivers, supply men and janitors, exclusive of all office clerical employees, salesmen, all professional employees, all guards and all supervisors as defined in the Act.

(m) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer to Bob Harris immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay due to the violation against him in accordance with the manner set forth in "The Remedy." In the same manner, make Gregory C. Cook, Dennis Zadnick, and Max Wilson whole for any loss of pay they may have suffered due to the discrimination against them.

(b) Upon request, recognize and bargain collectively in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America as the exclusive bargaining representative of the employees in the appropriate bargaining unit described above and if an understanding is reached embody such understanding in a signed agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plant in Boonville, Indiana, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by an authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violation of the Act not specifically found herein.

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[12] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National labor Relations Board."